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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 414.

JOSEPH P. MONTEROSSO, et al.,
Petitioners,

v.

ST. LOUIS GLOBE-DEMOCRAT PUBLISHING COMPANY,
Respondent.

REPLY OF PETITIONERS TO RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI.

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Cases Cited.

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REASONS FOR REPLY

Petitioners were compelled to petition for and obtain time to file a reply to the Respondent's Brief in Opposition to Certiorari because of Respondent's unwarranted and unorthodox actions in injecting into this litigation the wholly irrelevant, immaterial and unrelated issue of a suit filed on August 5, 1963 by the St. Louis Mailer's Union Local No. 3, against the Globe-Democrat Publishing Co. et al., in the U. S. District Court in St. Louis, Missouri. Respondent then states that "a certified copy of (the Complaint) has been filed with the Clerk of this Court."

Respondent then refers to certain "problems" which are "presented by this Complaint" in its footnote reference to the filing of the Complaint with the Clerk of this Court. The irrelevant, immaterial and unorthodox reference to this St. Louis Mailer's Union Local No. 3 v. St. Louis Globe-Democrat Publishing Company et al., litigation is contained on page 8 of Respondent's Brief in Opposition to Certiorari.

It is with great reluctance that Petitioners deign to reply to the unwarranted and unorthodox injection of this false issue. Petitioners' reluctance arises only because of their concern for dignifying this type of desperate tactic by their opponent. Petitioners are further compelled to file with the Clerk of this Court a certified copy of the responsive pleadings filed by the Defendant, Globe-Democrat Publishing Co., to the Complaint of the St. Louis Mailer's Union Local No. 3. No where in the Globe's responsive pleadings do the mysterious "problems" designated by Respondent in its footnote reference on pg. 8 of its Brief as "res judicata, estoppel by judgment, splitting of claims, etc." appear in the form of affirmative defenses to this apparently disturbing Complaint.

The opportunity to reply to Respondent's Brief in Opposition further compels two additional observations regarding the posture of Respondent's opposition to Certiorari in this case. On page 3, Point I (Respondent's Brief), respondent fearlessly goes into the very teeth of the reasoning of this Court in Mr. Justice Douglas' opinion in the case of United Steelworkers v. American Mfg. Co., 80 S. Ct. 1343, l. c. (5, 6), 1346.

This Court's opinion states:

(1) ". . . In our role of developing a meaningful body of law to govern the interpretation and enforce-

ment of collective bargaining agreements, **we think special heed should be given to the context** in which collective bargaining agreements are **negotiated and the purpose which they are intended to serve**" (Boldface added for emphasis by Petitioners).

Petitioners paraphrased this sentence in their petition (Petitioners' Brief, pg. 2), as follows:

> "Whether a state supreme court may interpret a collective bargaining agreement in a suit by individual employees against the employer, **by rejecting from consideration the intention** of the parties, **the context** in which the agreement was negotiated and **the purpose** which the collective bargaining agreement is intended to serve" (Bold face added for emphasis by Petitioners).

Respondent interprets (Respondent's Brief, pg. 3), as follows:

> "Argumentative in form, and false in implication as this question no doubt is, it does not state a federal question at all.
>
> Lacking any reference to a federal right, the question (even if it were an accurate description of what the Missouri court did) can only be answered by this court, '**yes.**'" (Bold face added for emphasis by Petitioners).

Finally, Respondent has failed to include anywhere in his Brief, the legal basis upon which the Missouri Supreme Court considered and ruled upon the "federal question" in its opinion in the case of Irwin v. Globe-Democrat Publishing Company (Missouri, 368 S. W. 2d 452, l. c. PER CURIAM opinion (6, 7), 458) (This opinion was cited and relied upon in the PER CURIAM opinion in Petitioners' case (Petitioners' Brief, pg. 23)). The opinion states (Petitioners' Brief, pg. 33):

> "However, if in a suit in a state court on a collective bargaining agreement by an employee we are required to apply 'federal substantive law,' and we did not do so and the result reached is contrary to such law, then plain error would have resulted. In our discretion, we may consider plain error affecting substantial rights, Civil Rule 79.04, V. A. M. R., **and on that discretionary basis we shall examine the contention**, presented now for the first time, **that we erred in not ruling the case pursuant to 'federal substantive law'** which plaintiffs at no time urged" (Bold face added for emphasis by Petitioners).

The Missouri Civil Rule upon which the Missouri Supreme Court considered and ruled upon the "federal question" is fully cited as Missouri Rules of Civil Procedure, 79.04, V. A. M. R.; Missouri Supreme Court Rules, 79.04, Vol. 4, pg. 5011, Missouri Revised Statutes, 1959. The rule is as follows:

> "Plain errors affecting substantial rights may be considered on motion for a new trial or on appeal, in the discretion of the court, though not raised in the trial court or preserved for review, or defectively raised or preserved, when the court deems that manifest injustice or miscarriage of justice has resulted therefrom."

CONCLUSION.

Petitioners respectfully submit in reply to the Respondent's Brief in opposition to Certiorari that the Respondent's attempted injection of unwarranted and irrelevant issues in an unorthodox fashion cannot cloud the fact that the "federal question" is timely raised and the further fact that this Court has clearly charted the course by which the Supreme Court of Missouri will interpret and

enforce collective bargaining agreements. Petitioners again pray that the Writ of Certiorari issue.

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Counsel for Petitioners.

Affidavit of Service.

State of Missouri, } ss.
City of St. Louis. }

I, Jerome J. Duff, of counsel for the Petitioners herein, and an attorney of record for the Petitioners in the Courts below, depose that on the ..... day of October, 1963, I served four copies of the foregoing Reply of Petitioners to Respondent's Brief in Opposition to Certiorari, as required by Rule 33, Paragraph 1, by personally delivering said copies hereof to Lon O. Hocker, Jr., Attorney of Record for the Respondent in care of the law offices of Hocker, Goodwin and MacGreevy, Ambassador Building, 411 North Seventh Street, St. Louis 1, Missouri.

.....
Jerome J. Duff.

Subscribed and sworn to before me at St. Louis, Missouri, on this ..... day of October, 1963.

.....
Notary Public.

My Commission Expires: